

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

DOUG STAGEMEYER,)
)
Plaintiff,) **7:01CV5003**
)
vs.)
)
MIKE DOWLING,)
)
Defendant.)

This matter is before the court on plaintiff's MOTION FOR REVIEW OF TAXATION OF COSTS (Filing 110). Defendant has filed a response in opposition (Filing 113).

In general, costs other than attorney's fees "shall be allowed as of course to the prevailing party unless the court otherwise directs." Fed. R. Civ. P. 54(d)(1). In this case, the jury returned a verdict in favor of the defendant and against the plaintiff, the plaintiff was not a "prevailing party," and it was proper for the Clerk to award costs to the defendant.

Turning to the amount of costs awarded, the court's October 15, 2003 Order (Filing 88) clearly provides that the defendant was to bear *all* costs associated with taking the trial depositions of Trooper Chad Phaby and Trooper Ken Moody. The payment of *all* expenses was the cost defendant was ordered to bear in return for permission to conduct untimely trial depositions. It was not the plaintiff's fault that the two defense witnesses became unavailable to attend the trial. Defendant chose to incur the costs of taking the two depositions as the alternative to being unable to call Phaby and Moody as witnesses. In this regard, pursuant to the October 15, 2003 Order, the following additional amounts should not have been taxed to the plaintiff:

\$189.90	Chad Phaby videotaped deposition, court reporter's invoice
\$617.50	Chad Phaby, air fare to attend video deposition
\$137.10	Ken Moody, videotaped deposition, court reporter's invoice

Upon careful review, the court finds that the remainder of the costs and expenses were reasonably incurred by the defendant.

IT IS ORDERED that plaintiff's MOTION FOR REVIEW OF TAXATION OF COSTS (Filing 110) is granted. Plaintiff's objection is sustained in the amount of \$944.50, as set forth above.

DATED January 28, 2004.

BY THE COURT:

**s/ F.A. Gossett
United States Magistrate Judge**